



Centre for Women's Justice and Tackling Double Disadvantage partnership

Westminster Hall debate to be held on Wednesday 5 July 2023 from 9.30-11.00am:

That this house has considered the criminalisation of victims of violence against women from ethnic minority and migrant communities

Briefing for MPs

"Modern slavery is more likely to be considered ... than the impact of domestic violence."

Prosecutor

About the Centre for Women's Justice and Tackling Double Disadvantage

[Centre for Women's Justice](#) (CWJ) is a lawyer-led charity working with frontline women's services to challenge police and prosecution failings around violence against women and girls (VAWG), including the unjust criminalisation of victims. The [Tackling Double Disadvantage](#) partnership consists of six charities who aim to tackle intersectional discrimination experienced by Black, Asian, minoritised and migrant women in contact with the criminal justice system: [Hibiscus Initiatives](#), [Agenda Alliance](#), [Women in Prison](#), [Zahid Mubarek Trust](#), [Muslim Women in Prison Project](#) and [Criminal Justice Alliance](#).

Background and purpose of the debate

At least 57% of women in prison and under community supervision by probation services are victims of domestic abuse, and for many this is directly linked to their offending.¹ This occurs in a wide range of circumstances, including women who are coerced by their abuser to offend, and those who defend themselves against abuse and are prosecuted as a result.² The true proportion is likely to be much higher because of barriers to women disclosing abuse.³ Other forms of violence against women and girls (VAWG) can also lead women and girls into contact with the criminal justice system as suspects and defendants.⁴

Yet whereas there is a legal, policy and practice framework in place to protect victims of trafficking who offend as a result of their exploitation, there is no such protection for victims of domestic abuse and other forms of VAWG who offend as a result of their experience of abuse. Gaps in law, policy and practice mean that victims' experience of VAWG is not properly taken into account in criminal proceedings against them, so that victims are unfairly criminalised. Black, Asian, minoritised and migrant women face additional barriers to justice, with evidence of unequal treatment and outcomes throughout the criminal justice process.⁵

Why does this matter now?

The debate takes place in the context of a collapse in women and girls' trust in the criminal justice system, with evidence of systemic racism and sexism in the police, police-perpetrated VAWG, and plummeting prosecutions and convictions for rape and domestic abuse offences.⁶ Measures in the Nationality and Borders Act⁷ and Illegal Migration Bill further aggravate such mistrust by curtailing the rights of migrant and trafficked women and widening the net of criminalisation.

We urge MPs to take part in this debate to press the Government to undertake reforms in law, policy and practice to prevent the unjust criminalisation of Black, Asian, minoritised and migrant victims of VAWG, as detailed below.

How victims of VAWG are swept into the criminal justice system

“They are not giving us a safe space.”

Woman with lived experience of domestic abuse and the criminal justice system⁸

There is overwhelming evidence that many women are unfairly swept into the criminal justice system as a direct result of their experience of domestic abuse and other forms of VAWG. This is due to a lack of effective defences and the failure of criminal justice agencies to identify victims and take proper account of the context of abuse in which alleged offending may have occurred.⁹

There is a strong similarity between victims of domestic abuse who find themselves accused of offending as a consequence of their abuse, and victims of human trafficking and modern slavery who are compelled to commit offences as part of, or as a result of, their exploitation. VAWG can frequently be closely intertwined with modern slavery. Yet victims of VAWG who are not trafficking victims do not have a statutory defence when they are compelled to commit offences in very similar circumstances. And whereas householders defending themselves against an intruder are permitted by law to use disproportionate force provided this was reasonable in the circumstances as they genuinely believe them to be, no such latitude is allowed to domestic abuse victims defending themselves against their abuser.

The links between domestic abuse and women’s offending are recognised in the Government’s Female Offender Strategy (2018)¹⁰ and FOS Delivery Plan (2023)¹¹ but this has not yet translated into a strategic approach to ensuring the public interest is served in these cases, so that victims receive support, are diverted away from the criminal justice system where appropriate and, if prosecuted, have proper account taken of their experience of abuse. Key facts include the following:

- As well as being victims of VAWG and exploitation, the majority of women in contact with the criminal justice system are experiencing multiple disadvantage including mental health needs, harmful substance use and poverty.¹²
- Women are three times more likely to be arrested than their male partners at a domestic abuse incident involving counter-allegations, often where they have used force to protect themselves from further harm from their abuser.¹³
- 63% of girls and young women (16–24) serving sentences in the community have experienced rape or domestic abuse in an intimate partner relationship.¹⁴
- Of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence.¹⁵
- More than half of arrests of women for alleged violence result in no further action¹⁶, highlighting the need for the police to respond to incidents of alleged violence in a gender-informed way.
- Women are more likely than men to commit an offence to support someone else’s drug use (48% to 22%).¹⁷
- Some women are coerced into offending by abusive partners or face malicious allegations, as abusers use the criminal justice system as a way of extending control over their victim.¹⁸

Additional factors affecting Black, Asian, minoritised and migrant victims of VAWG

“Women from ‘ethnic minorities’ don’t speak up because they don’t think they can get help... They don’t have faith in the system.”

Probation practitioner¹⁹

Black, Asian, minoritised and migrant women are particularly vulnerable to being unfairly swept into the criminal justice system. This is because they experience additional barriers to disclosing abuse and accessing support, and they face systemic racism from criminal justice agencies.²⁰ This is partly due to a lack of cultural competency as agencies fail to respond appropriately to evidence of abuse, misinterpret women’s behaviour, and fail to ensure women are able to understand and participate fully in proceedings against them.²¹ Key facts include the following:

- **Overrepresentation in the criminal justice system:**
 - Women and girls from ‘minority ethnic’ groups are overrepresented at every stage of the criminal justice system.²²
 - Black women are twice as likely as white women to be arrested.²³
 - A quarter of girls and nearly a fifth of young women prosecuted in 2021 were from ‘minority ethnic’ⁱ groups.²⁴
- **Barriers to disclosure:**
 - Migrant women with spousal visas or who are undocumented are particularly vulnerable to VAWG and unfair criminalisation. Fear of destitution and deportation prevent women disclosing abuse due to the lack of a firewall to prevent the sharing of victims’ and witnesses’ data between police and Home Office for immigration enforcement purposes.
 - Additional barriers to disclosing abuse and having it properly taken into account, including mistrust in the authorities, poor quality interpreting and discriminatory attitudes, can increase the chances of unfair treatment for Black, Asian, minoritised and migrant women in these cases.²⁵
 - Community dynamics and cultural and religious constraints can create barriers to disclosure for some women, including Muslim women. This can include concepts of honour and shame; fear of violent reprisals; fear of isolation and social ostracism; and concerns about the impact of disclosure on children and siblings who may be stigmatised.²⁶
- **Criminal justice agencies are ill-equipped to respond:**
 - Poor quality interpreting and translation leads to misunderstanding or lack of information about the context of abuse in which alleged offending occurred.²⁷

ⁱ The Tackling Double Disadvantage partnership aims to use language that challenges and does not contribute to racist ideas, actions and policies. We use the terms ‘Black, Asian and minoritised women’ or ‘racially minoritised women’ and we aim to be more specific where we can. Where we are referring to data collected by others using different terminology, we use that terminology in quotation marks in order to ensure accuracy.

- Lack of cultural competency and discriminatory attitudes on the part of criminal justice agencies leads to failures to recognise abuse or to understand its relationship to alleged offending, and susceptibility to cultural and racial myths and stereotypes.²⁸
- **Victims of trafficking (often a form of VAWG) are being put at greater risk of exploitation and criminalisation by immigration legislation:**
 - Proposals in the Illegal Migration Bill, if passed, would deny protection or support to victims of trafficking who arrive by irregular means, prevent them claiming asylum, and allow for their indefinite imprisonment.²⁹ These proposals would leave victims at increased risk of exploitation and contravene the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) and the Secretary of State's existing duty to allow victims of trafficking temporary permission to stay.
 - Measures introduced in the Nationality and Borders Act have already limited the rights of refugees who are victims of abuse and exploitation and increased the risk of their criminalisation.³⁰

The wider inequalities faced by Black, Asian, minoritised and migrant women in contact with the criminal justice system are highlighted in a report which will be published on the day of the debate by the Tackling Double Disadvantage partnership.

What needs to change?

We are calling for the Government to:

1. **Introduce statutory defences for victims of domestic abuse who are accused of offences** and add a commitment to the Victims' Code to protect all victims of VAWG from unjust criminalisation, ensuring they have their rights upheld as victims and are not stigmatised;
2. **Implement a firewall to end the sharing of victims' and witnesses' data between the police and the Home Office for immigration enforcement purposes**, as recommended by the Justice Select Committee, Domestic Abuse Commissioner and women's sector services;
3. **Increase investment in women-specific services for victims of VAWG facing criminal proceedings** to ensure they have a safe space to disclose abuse and receive support at the earliest stage in proceedings, including services led by and for Black, Asian, minoritised and migrant women;
4. **Ensure that criminal justice practitioners at every stage of the process (police, CPS, judges, magistrates, juries, prisons and probation) take proper account of the abuse experienced by victim suspects/defendants and are accountable for doing so.** All staff should have access to training, guidance and expert support from women's specialist services to enable them to consider fully the relationship between alleged offending and experiences of abuse. This must include ensuring cultural competency so that criminal justice agencies can respond effectively to circumstances faced by Black, Asian, minoritised and migrant women;
5. **Ensure that existing procedural safeguards (such as special measures for victim witnesses in court) are used to enable victim suspects/defendants to give their best evidence** about any context of domestic abuse in which alleged offending took place, and

that additional safeguards are introduced where necessary (such as a process to allow for pausing police interview under caution where it becomes clear that the suspect may be a victim of domestic abuse);

6. **Withdraw proposals in the Illegal Migration Bill that would limit the rights of potential victims of trafficking (which are expressly guaranteed by international instruments binding in the UK);** and
7. **Collect and analyse disaggregated data** to improve understanding of the criminalisation of victims of VAWG, including intersectional discrimination experienced by Black, Asian, minoritised and migrant women.

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¹ [Ministry of Justice \(2018\) Female Offender Strategy](#)

² [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls, pp. 26 et seq](#)

³ [Gelsthorpe, L., Sharpe, G., and Roberts, J. \(2007\) Provision for Women offenders in the community; Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying](#)

⁴ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)

⁵ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls, pp. 26 et seq](#)

⁶ [Casey, L. \(2023\) Baroness Casey Review: Final Report – An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service.](#) On trust, see also: [Crest Advisory \(2022\) Forgotten voices: Policing, stop and search and the perspectives of Black children](#) which found that 'Black girls had the lowest level of trust in the police among all children; only a third of Black girls trusted the police compared to 43 per cent who actively distrusted the police.' (p.19), cited in [Children's Commissioner \(2023\) Strip search of children in England and Wales – analysis by the Children's Commissioner for England.](#) On police-perpetrated VAWG and response to VAWG, see also [Centre for Women's Justice \(2022\) CWJ briefing on police perpetrated domestic abuse super-complaint outcome;](#) and [HMIFRCS \(2021\) Police response to violence against women and girls: Final Inspection Report](#)

⁷ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls, p.33](#)

⁸ [Centre for Women's Justice \(2022\) No Safe Space: lessons for national policy and local practice from the West Midlands multi-agency response to women involved in offending or alleged offending who are victims of domestic abuse, p.2](#)

⁹ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)

¹⁰ [Ministry of Justice \(2018\) Female Offender Strategy](#)

¹¹ [Ministry of Justice \(2023\) Female Offender Strategy Delivery Plan 2022 to 2025](#)

¹² [Ministry of Justice \(2018\) Female Offender Strategy; Home Office \(2007\) The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System](#)

¹³ [Hester, M. \(2012\) Portrayal of Women as Intimate Partner Domestic Violence Perpetrators.](#) Professor Hester studied the following three sample groups: (1) All women recorded by the police as sole domestic violence perpetrator in a heterosexual relationship (N=32); (2) a random sample of sole male perpetrators; and (3) a random sample involving 32 cases where both partners were recorded at some time as perpetrator. These different sets of cases were then compared to assess differences and similarities in the rate of arrest where allegations were made. Analysis showed that an arrest was three times more likely to follow where the allegations were made against a woman, than where they were made against a man.

¹⁴ [Wong, K. et al. \(2017\) T2A Final Process Evaluation Report, Policy Evaluation Research Unit](#)

¹⁵ [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury](#)

¹⁶ Five police forces responding to a Freedom of Information request by the Howard League provided data on 317 arrests of women for alleged violent incidents. More than half of the arrests for alleged violence (163) resulted in no further action or release without charge.

¹⁷ [Light, M. et al \(2013\) Gender differences in substance misuse and mental health amongst prisoners](#)

¹⁸ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)

¹⁹ [Centre for Women's Justice \(2022\) No Safe Space: lessons for national policy and local practice from the West Midlands multi-agency response to women involved in offending or alleged offending who are victims of domestic abuse, p.31](#)

²⁰ Tackling Double Disadvantage partnership (2023) Tackling Double Disadvantage Action Plan: ‘One Year On’ Progress Report

²¹ [Centre for Women’s Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls, pp.26 et seq](#)

²² [Ministry of Justice \(2022\) Women and the criminal justice system 2021](#)

²³ [Gov.uk \(2022\) Ethnicity facts and figures: arrests, para.7 ‘By ethnicity and sex’](#)

²⁴ [Ministry of Justice \(2022\) Women and the criminal justice system 2021](#)

²⁵ [Centre for Women’s Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls, pp.26 et seq](#)

²⁶ [Ibid](#)

²⁷ [Ibid](#)

²⁸ [Ibid](#)

²⁹ [Joint Council for the Welfare of Immigrants \(2023\) ‘Illegal Migration’ Bill 2023 Briefing](#)

³⁰ Sections 58 and 59 of the Nationality and Borders Act penalise trafficking victims who disclose their exploitation too late (despite the fact that late disclosure is a known feature of trafficking and modern slavery). Section 63 allows victims with a reasonable grounds decision to be disqualified from protection if they are deemed to be a ‘threat to public order’ or to have made their application ‘in bad faith’; this includes foreign national victims who have received a prison sentence of 12 months or more, even if their conviction relates to their exploitation.